

Before the
Federal Communications Commission
Washington, D C 20554

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FCC Mail Room

In the Matter of)
)
Telecommunications Relay Services and)
Speech-to-Speech Services for) CG Docket No 03-123
Individuals with Hearing and Speech Disabilities)

ORDER

Adopted: June 12, 2006

Released: June 16, 2006

By the Commission

I INTRODUCTION

1 This *Order* addresses two issues concerning the provision of Video Relay Service (VRS), a form the telecommunications relay services (TRS), raised in the Further Notice of Proposed Rulemaking in the *2004 TRS Report and Order & FNPRM*¹ We clarify that if the calling party or the VRS communications assistant (CA) find that they are not communicating effectively given the nature of the call, the 10-minute in-call replacement rule² does not apply and the VRS provider may have another CA handle the call We also clarify that the VRS CA may ask the VRS user questions during call set-up when necessary to assist the CA in properly handling the call

II BACKGROUND

2 Title IV of the Americans with Disabilities Act of 1990 (ADA),³ which added Section 225 to the Communications Act of 1934, as amended, requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to persons with hearing or speech disabilities in the United States⁴ TRS enables a person with a hearing or speech disability to have access to the nation's telephone system to communicate with a person without such a disability This is accomplished through TRS facilities that are staffed by specially trained CAs The CA relays conversations between persons using various types of assistive communication devices (*e g*, a TTY or computer) and persons using voice telephones⁵

¹ See *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos 90-571 & 98-67 & CG Docket No 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12569-12570, paras 248-249 (June 30, 2004) (*2004 TRS Report and Order & FNPRM*) Several other issues raised in the FNPRM remain pending, including the cost recovery methodology for VRS, the jurisdictional separation of costs for VRS and IP Relay, and whether these services should be mandatory

² See 47 C F R § 64.604(a)(1)(v) This rule requires the CA to stay with a call for at least 10 minutes to minimize disruptions to the call caused by changing CAs See para 4, *infra*

³ Pub L No 101-336, § 401, 104 Stat 327, 336-69 (1990)

⁴ 47 U S C § 225(b)(1)

⁵ See 47 U S C § 225(a)(3) (defining TRS), 47 C F R § 64.601(14)

3 The statute requires TRS to offer persons with hearing and speech disabilities access to the telephone system that is “functionally equivalent” to voice telephone services.⁶ Congress recognized that persons with hearing and speech disabilities have long experienced barriers in their ability to access, utilize, and benefit from telecommunications services,⁷ and therefore found TRS necessary to “bridge the gap between the communications-impaired telephone user and the community at large.”⁸ Since the implementation of a uniform nationwide system of TRS in 1993, the Commission has addressed issues relating to its provision, regulation, and compensation.⁹

4 When Section 225 was enacted, and TRS was implemented, TRS calls were placed using a text telephone device (TTY) connected to the Public Switched Telephone Network (PSTN). In March 2000, however, the Commission recognized VRS as a form of TRS, providing a new means for persons with hearing disabilities who use American Sign Language (ASL) to have access to the telephone system.¹⁰ VRS requires the use of a broadband Internet connection between the VRS user and the CA, which allows them to communicate in ASL via a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the person with a hearing disability and by voice with the hearing person. As a result, the conversation between the two end users flows in near real time and in a faster manner than with a TTY or text-based TRS call. VRS therefore provides a degree of “functional equivalency” that is not attainable with text-based TRS by allowing those persons whose primary language is ASL to communicate in sign language, just as a hearing person communicates in, *e.g.*, spoken English.

5 The TRS rules¹¹ require that CAs stay with a call at least 10 minutes before transferring the call to another CA.¹² This rule is intended to reduce disruptions caused by in-call transfers and make the call more functionally equivalent to voice telephone calls.¹³ Its application to VRS, however, has raised concerns. Specifically, in the *2004 TRS Report and Order & FNPRM* the Commission noted that in some VRS calls “the caller using ASL and the VRS CA may not be able to understand each other because, *e.g.*, each uses a different style of sign language,” and therefore the call might be more effectively handled by a different CA.¹⁴ The Commission therefore sought comment on whether an

⁶ 47 U.S.C. § 225(a)(3).

⁷ See generally *2004 TRS Report and Order & FNPRM*, 19 FCC Rcd at 12479-12480, para. 3 (discussing legislative history of Title IV of the ADA).

⁸ See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129 (1990) (House Report).

⁹ See generally *2004 TRS Report and Order & FNPRM*, 19 FCC Rcd at 12479-12486, paras. 2-13 (overview of past TRS orders).

¹⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-5154, paras. 21-27 (March 6, 2000) (*Improved TRS Order & FNPRM*) (recognizing VRS as a form of TRS), 47 C.F.R. § 64.601(17) (defining VRS).

¹¹ See 47 C.F.R. §§ 64.604 (the TRS “mandatory minimum standards”).

¹² 47 C.F.R. § 64.604(a)(1)(v). This rule was adopted in the March 2000 *Improved TRS Order*. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket 98-67, 15 FCC Rcd 5140, at 5168-5169, paras. 67-69 (March 6, 2000) (*Improved TRS Order*). The 10-minute period begins when the calling party reaches the CA and they begin communicating.

¹³ *Improved TRS Order*, 15 FCC Rcd at 5169, para. 68, see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Notice of Proposed Rulemaking, 13 FCC Rcd 14187, 14211, at para. 61 (May 20, 1998) (raising the 10-minute in-call replacement rule in NPRM).

¹⁴ *2004 TRS Report and Order & FNPRM*, 19 FCC Rcd at 12569, para. 248.

exception to the 10-minute rule should apply in this context¹⁵

6 The Commission also sought comment on whether VRS CAs should be permitted to ask questions to the VRS user during call set-up so that the VRS CA can gain an understanding of the nature of the call before the CA begins relaying the call¹⁶ The Commission noted that because the role of the CA “is to relay the call back and forth between the parties as a transparent entity, CAs generally may not ask questions to the initiating party about the call”¹⁷ The Commission further noted, however, that “VRS [] presents different challenges for CAs who have to deal with the complexities of sign language, including the fact that one sign can mean different things depending on the context”¹⁸ The Commission also sought comment on how, assuming VRS CAs are allowed to ask questions, the Commission could ensure that the VRS CA does not interfere with the independence of the VRS user should the caller choose not to answer the questions¹⁹

7 In response to these two issues, five comments, six reply comments, and one *ex parte* letter were filed²⁰ All commenters generally support allowing the replacement of the VRS CA if necessary to ensure effective communication²¹ Hands On states, for example, that an exception to the 10-minute rule is warranted for VRS in circumstances where the topic of conversation is of a specialized nature and there is a more qualified interpreter available to handle that specialized subject²² CSD also supports permitting the replacement of the CA to ensure effective communication within the 10-minute period, but would keep the rule intact Instead, CSD suggests not triggering the 10-minute time period until the VRS provider has ensured that the VRS CA handling the call is capable of carrying on an effective relay conversation with the VRS user²³ This way, “once an appropriate interpreter-consumer match has been made and interpreter successfully begins to interpret the call, the ten minute rule should fall back into place to ensure continuity for both parties to the VRS call”²⁴

¹⁵ *Id* The Commission adopted a different standard for Speech-to-Speech (STS) because of concerns unique to that service, in that case, it adopted a *longer* period of time See *Improved TRS Order*, 15 FCC Rcd at 5170, para 70

¹⁶ 2004 TRS Report and Order & FNPRM, 19 FCC Rcd at 12569, para 249

¹⁷ *Id*

¹⁸ *Id*

¹⁹ *Id*

²⁰ Comments were filed by the State of California and the California Public Utilities Commission (CA PUC) (Oct 18, 2004), Communication Services for the Deaf, Inc. (CSD) (Oct 18, 2004), Hands On Video Relay Services, Inc (Hands On) (Oct 15, 2004), Sorenson Media, Inc (Sorenson) (Oct 18, 2004), and Sprint Corporation (Sprint) (Oct 18, 2004) Reply comments were filed by CSD (Nov 15, 2004), and five individuals, Nancy Bender (Oct 20, 2004), Kathryn Bennett (Oct 20, 2004), Diana O’Toole (Oct 20, 2004), J Powell (Oct 20, 2004), and Jennifer Sweeney (Oct 20, 2004) CSD also filed an *ex parte* letter addressed to Jay Keithley and Thomas Chandler of Consumer & Governmental Affairs (Sept 14, 2005)

²¹ See, e.g., CA PUC Comments at 17, CSD Comments at 32, Hands On Comments at 26, Sorenson Comments at 18, Sprint Comments at 12, CSD Reply Comments at 7, Nancy Bender, Kathryn Bennett, Diana O’Toole, J Powell, and Jennifer Sweeney

²² Hands On Comments at 26

²³ CSD Comments at 32, CSD Reply Comments at 7, see also CSD *Ex parte* letter at 1-2,

²⁴ CSD Comments at 32 CSD also notes that the TRS rules require all VRS providers to ensure that their VRS CAs are “qualified interpreters,” i.e., that they can interpret “effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary” CSD *Ex parte* letter at 1 (citing 47 C.F.R. § 64.604(a)(1)) CSD asserts that regardless of how long the VRS CA remains with the call, “if effective communication is not occurring, *there is no qualified interpreter*, and the VRS provider is not in compliance with the FCC’s rules” *Id* at 2 (emphasis in original) In other words, CSD argues that in view of the rule requiring a

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8 Commenters also generally support permitting the VRS CAs to ask questions to the VRS user during call set-up in order to ensure that the CA can effectively relay the conversation²⁵ CSD asserts, for example, that interpreters should be permitted to ask callers questions that would enhance the quality of their interpreting, but that the user should be given the opportunity to decide whether and how they will answer those questions²⁶ CSD states that such an approach will not interfere with the independence of the callers²⁷ Sprint asserts, however, that the Commission need not directly address this issue because, although the CA plays a transparent role, the code of ethics applicable to interpreters allows for interaction between the calling party and the interpreter in this context²⁸

III DISCUSSION

A The 10-Minute In-call Replacement Rule

9 We clarify that if the party using sign language or the VRS CA find that they are not communicating effectively given the nature of the call, the VRS provider may have another CA handle the call without violating the 10-minute in-call replacement rule The purpose of the rule is to prevent disruptions to a call and make the call more functionally equivalent to a voice telephone call²⁹ In this regard, the rule is principally intended for the benefit of the TRS user At the same time, there may be VRS calls during which the party using sign language, the CA, or both, find that they are unable to communicate effectively because of regional dialect differences, lack of knowledge about a particular subject matter (*e.g.*, a technical or complex subject matter), or other reason In these circumstances, when effective communication is not occurring, we conclude that the 10-minute in-call replacement rule is not violated if the VRS provider has another CA take over the call³⁰

B VRS CAs Asking Questions

10 We clarify that, consistent with the TRS rules, the VRS CA may ask a VRS caller questions during call set-up when necessary to ensure that the CA can effectively handle the call We recognize that in some circumstances the complexity of sign language may make it difficult for the CA to effectively relay the call if the CA does not understand the subject matter or context of the call³¹ In addition, we understand that it is universal practice in the interpreting profession to ask customers questions prior to an assignment in order to better facilitate effective communication³² As the

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qualified interpreter, the 10-minute rule should not begin until effective communication is established, at which time the 10-minute period begins and the CA must remain with the call for at least 10 minutes *Id*

²⁵ CA PUC Comments at 17, CSD Comments at 33, Sorenson Comments at 18, Sprint Comments at 12, Kathryn Bennett, Diana O'Toole, J Powell, and Jennifer Sweeney

²⁶ CSD Comments at 33, *see also* CA PUC Comments at 18

²⁷ CSD Comments at 33

²⁸ Sprint Comments at 12

²⁹ *See* para 5, *supra*

³⁰ We emphasize that this exception to the 10-minute rule does not permit VRS providers and CAs to switch CAs within the 10-minute time period for other reasons unrelated to the ability to effectively communicate in sign language For example, the VRS provider may not switch CAs within the 10-minute time period simply because the CA might *prefer* not to handle a call with a particular subject matter or a call made by a particular consumer

³¹ For example, the sign for "Congress," "Commission," "committee," and "council" is the same, and therefore the context of the conversation dictates which of these words would be voiced by the CA

³² *See* <http://www.deafnix.com/useterp.html>, "Working with an ASL-English Interpreter" *See also* <http://www.tid.org/125.pdf>, "RID Standard Practice Paper on Interpreting in legal settings"

Commission has noted, one sign can have different meanings depending on the context³³ Further, no commenters oppose allowing the VRS CA to ask questions during the call set-up³⁴ For these reasons, we find that VRS CAs may ask questions to the calling party during call set-up when necessary to ensure effective communication between the VRS CA and the VRS user³⁵

IV PROCEDURAL MATTERS

11 *Final Regulatory Flexibility Certification* The Regulatory Flexibility Act of 1980, as amended (RFA)³⁶ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities”³⁷ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction”³⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act³⁹ A “small business concern” is one which (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration (SBA)⁴⁰

12 This *Order* addresses two issues raised in the FNPRM in the 2004 TRS Report and Order & FNPRM: (1) whether an exception should be made to the 10-minute in-call replacement rule for VRS if the calling party using ASL and the VRS CA find that they are not communicating effectively given the nature of the call, permitting the VRS provider to have a new CA handle the call, and (2) whether a VRS CA should be permitted to ask the VRS user questions during call set-up when necessary to assist the CA in properly handling the call Given the complexity of sign language, the Commission concludes that the public interest is best served by permitting a VRS provider to have another CA handle the call if a CA cannot effectively communicate with the calling party, and by permitting a VRS CA to ask questions to the calling party during call set-up when necessary to gain an understanding of the nature of the call to ensure effective communication Because this *Order* addresses only how VRS CAs may handle VRS calls in particular circumstances, we certify that the requirements of the *Order* will not have a significant economic impact on a substantial number of small entities

13 We also note that, arguably, there are not a substantial number of small entities that will be affected by our action The SBA has developed a small business size standard for Wired

³³ 2004 TRS Report and Order & FNPRM, 19 FCC Rcd at 12569, para 249, see also note 31, *supra*

³⁴ See para 8, *supra*

³⁵ At the same time, we add that if the VRS user declines to answer the questions, the CA must proceed with the call See 47 C F R § 64.604(a)(3)(i) (prohibiting a TRS provider from refusing any calls)

³⁶ The RFA, see 5 U S C §§ 601-612, has been amended by the Contract with America Advancement Act of 1996, Pub L No 104-121, 110 Stat 847 (1996) (CWAAA) Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA)

³⁷ 5 U S C § 605(b)

³⁸ *Id*

³⁹ 5 U S C § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U S C § 632) Pursuant to 5 U S C § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*”

⁴⁰ 15 U S C § 632

Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees⁴¹ Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund AT&T Corp , Communication Access Center for the Deaf and Hard of Hearing, Inc , Hamilton Relay, Inc , Hands On, MCI, Nordia Inc , Sorenson, and Sprint We note that two of the providers noted above are small entities under the SBA's small business size standard In addition, the Interstate TRS Fund Administrator is the only entity that compensates eligible providers of VRS Under these circumstances, we conclude that the number of small entities affected by our decision in this Order is not substantial The Commission will send a copy of this *Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA⁴² This certification will also be published in the *Federal Register*⁴³

14 *Paperwork Reduction Act* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198⁴⁴

15 *Congressional Review Act* The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act, *see* 5 U S C 801(a)(1)(A) because the adopted rules are rules of particular applicability

⁴¹ 13 C F R § 121.201, NAICS code 517110 According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year U S Census Bureau, 1997 Economic Census, Subject Series Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct 2000) Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more Thus, under this size standard, the majority of firms can be considered small (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees, the largest category provided is "Firms with 1,000 employees or more")

⁴² 5 U S C § 605(b)

⁴³ *Id*

⁴⁴ *See* 44 U S C 3506(c)(4)

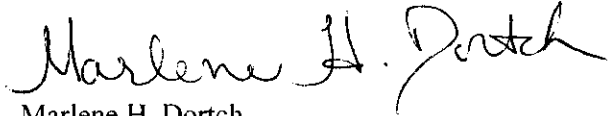
V ORDERING CLAUSES

16 Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U S C §§ 151, 152, and 225, this *Order* IS hereby ADOPTED

17 IT IS FURTHER ORDERED that this *Order* SHALL BE EFFECTIVE 30 days after publication in the *Federal Register*

18 To request materials in accessible formats (such as braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY) This *Declaratory Ruling* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>

FEDERAL COMMUNICATIONS COMMISSION



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